



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1082/P3
CMH:kjf:rs

DOA:.....Ley, BB0375 – Restricted use of special prosecutors

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

COURTS AND PROCEDURE

PUBLIC DEFENDER

Current law requires the state public defender to enter into as many annual contracts as possible with private attorneys or firms to provide legal representation. This bill requires each such contract to contain a provision stating that late payments do not accrue interest.

CRIMES

Under current law, a judge may appoint a special prosecutor, or a district attorney may request a judge to appoint a special prosecutor, to perform the duties of the district attorney if certain circumstances exist such as: there is no district attorney, the district attorney is absent, or the district attorney is serving in the armed forces; the district attorney is related to the party to be tried or has determined that a conflict of interest exists; or the district attorney is physically unable to attend to his or her duties. This bill specifies that inability to attend to duties must be due to a health issue, and this bill requires the judge, or the requesting district attorney, to submit to DOJ an affidavit attesting to the existence of the circumstance that qualifies for the appointment of a special prosecutor. Under current law, the court fixes the amount of compensation for a special prosecutor based on the rates provided to private attorneys providing legal representation through a contract with the state

public defender and DOA must pay that compensation. Under this bill, DOJ must approve the appointment of a special prosecutor before the court may fix the amount of compensation. In addition, this bill provides that late payment of compensation does not accrue the 12 percent interest that certain other late payments do.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 16.528 (3) (f) of the statutes is created to read:

16.528 (3) (f) A contract under s. 977.08 (3) (f) or compensation ordered under s. 978.045 (2).

SECTION 2. 20.475 (1) (d) of the statutes is amended to read:

20.475 (1) (d) *Salaries and fringe benefits.* The amounts in the schedule for salaries and fringe benefits of district attorneys and state employees of the office of the district attorney and for payments under s. 978.045 (2) ~~(b)~~.

SECTION 3. 978.045 (1r) (intro.) of the statutes is amended to read:

978.045 (1r) (intro.) Any judge of a court of record, by an order entered in the record stating the cause for it, may appoint an attorney as a special prosecutor to perform, for the time being, or for the trial of the accused person, the duties of the district attorney. An attorney appointed under this subsection shall have all of the powers of the district attorney. The judge may appoint an attorney as a special prosecutor at the request of a district attorney to assist the district attorney in the prosecution of persons charged with a crime, in grand jury proceedings or John Doe proceedings under s. 968.26, in proceedings under ch. 980, or in investigations. The judge may appoint an attorney as a special prosecutor only if the judge or the requesting district attorney submits an affidavit to the department of justice attesting that any of the following conditions exists:

SECTION 4. 978.045 (1r) (e) of the statutes is amended to read:

978.045 (1r) (e) The district attorney is ~~physically~~ unable to attend to his or her duties due to a health issue or has a mental incapacity that impairs his or her ability to substantially perform his or her duties.

SECTION 5. 978.045 (2) (a), (b) and (c) of the statutes are consolidated, renumbered 978.045 (2) and amended to read:

978.045 (2) The If the department of justice approves the appointment of a special prosecutor under sub. (1r), the court shall fix the amount of compensation for any the attorney appointed as a special prosecutor under sub. (1r) according to the rates specified in s. 977.08 (4m) (b). ~~(b)~~ The department of administration shall pay the compensation ordered by the court from the appropriation under s. 20.475 (1) (d). ~~(e)~~ The court, district attorney, and the special prosecutor shall provide any information regarding a payment ~~under par. (b)~~ of compensation that the department requests.

SECTION 9301. Initial applicability; Administration.

(1) INTEREST ON COMPENSATION FOR SPECIAL PROSECUTORS. The treatment of section 16.528 (3) (f) (with respect to compensation ordered) of the statutes first applies to appointments made on the effective date of this subsection.

SECTION 9333. Initial applicability; Public Defender Board.

(1) INTEREST ON PAYMENTS FOR LEGAL REPRESENTATION. The treatment of section 16.528 (3) (f) (with respect to public defender contracts) of the statutes first applies to contracts entered into, or modified, renewed, or extended, on the effective date of this subsection.

(END)